

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

UNITED STATES OF AMERICA

Plaintiff,

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vs.

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Case No.:CR-294-WKW

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HENRY THOMAS,
Defendant.

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DEFENDANT'S MOTION TO STRIKE

COMES, James R. Cooper, Jr. who requests the Court strike COUNTS 1-11 of the INDICTMENT and states in support thereof as follows:

1. The government in Counts 1-11 allege that Henry Thomas ..." did knowingly embezzle, steal, and convert to his own use and without authority did convert a blank money order form under the authority of the United States Postal Service, to wit: ..."
2. The government then lists the serial numbers of eleven postal money orders.
3. The government alleges that this action violated the provisions of Title 18, USC, Section 500.
4. That section is as follows:

§ 500. Money orders

Whoever, with intent to defraud, falsely makes, forges, counterfeits, engraves, or prints any order in imitation of or purporting to be a blank money order or a money order issued by or under the direction of the Post Office Department or Postal Service; or

Whoever forges or counterfeits the signature or initials of any person authorized to issue money orders upon or to any money order, postal note, or blank therefor provided or issued by or under the direction of the Post Office Department or Postal Service, or post office department or corporation of any foreign country, and payable in the United States, or any material signature or indorsement thereon, or any material signature to any receipt or certificate of identification thereof; or

Whoever falsely alters, in any material respect, any such money order or postal note; or

Whoever, with intent to defraud, passes, utters or publishes or attempts to pass, utter or publish any such forged or altered money order or postal note, knowing any material initials, signature, stamp impression or indorsement thereon to be false, forged, or counterfeited, or any material alteration therein to have been falsely made; or

Whoever issues any money order or postal note without having previously received or paid the full amount of money payable therefor, with the purpose of fraudulently obtaining or receiving, or fraudulently enabling any other person, either directly or indirectly, to obtain or receive from the United States or Postal Service, or any officer, employee, or agent thereof, any sum of money whatever; or

Whoever embezzles, steals, or knowingly converts to his own use or to the use of another, or without authority converts or disposes of any blank money order form provided by or under the authority of the Post Office Department or Postal Service; or

Whoever receives or possesses any such money order form with the intent to convert it to his own use or gain or use or gain of another knowing it to have been embezzled, stolen or converted; or

Whoever, with intent to defraud the United States, the Postal Service, or any person, transmits, presents, or causes to be transmitted or presented, any money order or postal note knowing the same—

- (1) to contain any forged or counterfeited signature, initials, or any stamped impression, or
- (2) to contain any material alteration therein unlawfully made, or
- (3) to have been unlawfully issued without previous payment of the amount required to be paid upon such issue, or
- (4) to have been stamped without lawful authority; or

Whoever steals, or with intent to defraud or without being lawfully authorized by the Post Office Department or Postal Service, receives, possesses, disposes of or attempts to dispose of any postal money order machine or any stamp, tool, or instrument specifically designed to be used in preparing or filling out the blanks on postal money order forms—

Shall be fined under this title 11 or imprisoned not more than five years, or both.

5. The government alleges that whoever, “ ...” did knowingly embezzle, steal, and convert to his own use and without authority did convert a blank money order form under the authority of the United States Postal Service, to wit: ...” has committed a crime.
6. But the statute itself does not make those actions a crime. The statute makes the following a crime...” Whoever embezzles, steals, or knowingly converts to his own use or to the use of another, or without authority converts or disposes of any blank money order form provided by or under the authority of the Post Office Department or Postal Service; or ...”
7. The government says one commits the crime if they did knowingly embezzle, steal and convert. The Statute makes it a crime to embezzle, steal or knowingly convert.
8. As they are not precisely the same, those Counts should be stricken.
9. In Counts 12-22 the government alleges the Henry Thomas, “... did knowingly receive and possess a stolen and converted blank money order under the authority of the Unites

States Postal Service, to wit: ..." It then lists the same 11 money orders that were listed in Counts 1-11.

10. The Statute makes it a crime to, "...Whoever receives or possesses any such money order form with the intent to convert it to his own use or gain or use or gain of another knowing it to have been embezzled, stolen or converted; or ..."
11. The government has failed to adequately track the language of the statute. Under those Counts it alleges that Henry must knowingly receive and possess a stolen *and converted* blank money order with the intent to convert it to his own gain. The Statute does not make it a crime to possess a *stolen and converted blank* money order. Again there is a fatal variance in the government's indictment and the statute, necessitating dismissal of those Counts.

RESPECTFULLY SUBMITTED,

s/James R. Cooper, Jr. (COO021)
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Attorney for Defendant
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Montgomery, AL 36104
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CERTIFICATE OF SERVICE

I hereby certify that on this the 30 th day of July, 2007, I have served a copy of the foregoing Motion to Strike upon Ms. Susan Redmond , Asst. U.S. Attorney, P.O. Box 197, Montgomery, Alabama 36101 and by electronic case filing, by placing a copy of same in the United States Mail properly addressed and postage prepaid and by efiling.

s/James R. Cooper, Jr. (COO021)